

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2107 of 2007

01.5.2007

Between:

Md.Abdul Gaffar

... Petitioner

AND

Government of Andhra Pradesh, presented by its
Secretary, Revenue Department, Secretariat, Hyderabad
And others

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2107 of 2007

ORDER:

The petitioner filed the instant writ petition seeking a writ of Mandamus directing the District Collector, Hyderabad and the Mandal Revenue Officer, Khairatabad Mandal (MRO), to remove the board erected in/near petitioner's premises bearing house No.8-3-937, Yellareddyguda, Hyderabad.

The facts and circumstances leading to filing of this writ petition in brief are as follows. The property admeasuring 1277 Sq.yards in premises No.8-3-937 with compound wall is owned by Md.Ibrahim, the grandfather of petitioner. The tax is also being paid to Municipal Corporation of Hyderabad (MCH) in his name. Sometime in 1950, the premises was leased out to Department of Education, Government of Andhra Pradesh for running a primary school. The rents were paid to the petitioner. In 1980, petitioner filed a rent control case being R.C.No.180 of 1980 on the file of the Court of II Additional Rent Controller, Hyderabad, for eviction. By an order dated 06.5.1981, learned Rent Controller ordered eviction of the tenant, namely, District Educational Officer, Hyderabad. In obedience thereto, the tenant delivered possession to the petitioner, who is continuing in possession.

In 1981, Government issued notification under Section 4(1) of the Land Acquisition Act, 1894 (the LA Act, for brevity) proposing to acquire the premises. The petitioner challenged the same in W.P.No.119 of 1982. The same was dismissed on 24.3.1982 aggrieved by which the petitioner filed writ appeal being W.A.No.312 of 1982, which was dismissed on 22.4.1982 as the notification under Section 4(1) of LA Act lapsed. Through out pendency of writ proceedings, there was stay of delivery of possession. Be that as it is, Government issued yet another notification under Section 4(1) of LA Act on 26.7.1989. This was subject matter of W.P.No.12732 of 1989 in which this Court passed an order dated 19.2.1990 staying dispossession observing that all other proceedings may go on. Subsequently said writ petition was dismissed on 15.4.1993 observing the Land Acquisition Officer may conduct

enquiry under Section 5(1) of LA Act and determine whether the proceedings should be dropped or not. Thereafter no award was passed.

On 11.9.2006, the MRO put up a board near petitioner's premises claiming it as Government property. Trespassers were warned with prosecution. Petitioner then lodged a complaint on 11.9.2006 with the Commissioner of Police and gave a report to the District Collector to remove the board from the premises, in vain. Therefore, the petitioner filed the instant writ petition under Article 226 of Constitution of India.

Preliminary arguments in the case were heard on 06.2.2007 and on 27.2.2007. Learned Assistant Government Pleader for Revenue (General-T) vehemently opposed the writ petition contending that the land is a Government land and has already been taken possession for construction of elementary school. This was disputed and denied, therefore, this Court directed the learned Assistant Government Pleader to file counter affidavit. A counter affidavit is filed on 21.3.2007 by second respondent and petitioner has filed rejoinder/reply. Subsequently second respondent also filed additional counter affidavit on 23.3.2007.

The counter affidavit alleges that the schedule premises in T.S.No.4/1, Block-P, Ward No.6 of Yellareddyguda village is recorded, in column Nos.10 and 20 of Town Survey Land Register (TSLR) as "sarkari" (Government land)/ Government Vesting in Municipality (GVM). A board has been erected to that effect and land admeasuring 556 Sq.yards in T.S.No.4/1 has been handed over to Deputy Inspector of Schools, Khairatabad-II, Department of Education, Government of Andhra Pradesh, under a cover of panchanama on 02.7.2004. When the Assistant Engineer and his executive staff of engineering wing of Hyderabad went to the spot for taking up construction work, petitioner and his men obstructed and manhandled the officials. Executive Engineer filed a complaint against petitioner with P.S. Panjagutta on 08.2.2005. Again on 11.9.2006, when the Executive Officer went to the site along with staff, petitioner forcibly tried to enter land with his followers and to remove Government sign board creating nuisance. A police complaint was lodged. Compound wall was constructed immediately and the board was re-erected. It is alleged that Government is in continuous possession of the land and the petitioner has no right over the land. The counter, however, does not deny the rent control case filed by the petitioner and unsuccessful land acquisition proceedings initiated by the Government for acquiring the land.

In the additional counter affidavit, the District Collector states that on verification it is found that for the premises bearing No.8-3-935 to 937, one Anthony De' Souza was given power connection and the owner of the property for the premises is shown to be Md.Ibrahim, as evidenced in the municipal records. It is therefore alleged that petitioner has no manner of right to claim the Government land and that he is trying to encroach upon the land with *mala fide* intention to knock away the same.

Taking this Court through the earlier orders of various Courts and the notifications under LA Act as well as TSLR extract, learned Senior Counsel, Sri Challa Seetharamaiah, submits that when there is clinching evidence to support the ownership and title of the petitioner to the schedule property, erection of the board by the respondents would amount to deprivation of the right of petitioner without due process of law under the Constitution of India.

He placed reliance on **United States v Causby**^[1]. He also relied on **Dwarkadas Shrinivas of Bombay v Sholapur Spinning and Weaving Co Ltd**^[2], **Bishan Das v State of Punjab**^[3], **Jilubhai Nanbhai Khachar v State of Gujarat**^[4], **General Court Martial v Aniltej Singh Dhaliwal**^[5] and **R(Gillan) v Commissioner of Police of Metropolis**^[6]. He also points out that inconsistency in the counter affidavit and additional counter affidavit filed by the District Collector would show that in gross dereliction of duty District Collector attempted to take possession depriving the petitioner his right to enjoy the property without proper verification.

Learned Government Pleader for Revenue (General-T) submits that the land admeasuring 2560 Sq.yards in T.S.No.4/1 is Government land classified as GVM. After getting a report to that effect from subordinates, the second respondent issued proceedings on 09.6.2004 allotting the land to Deputy Inspector of Schools for construction of school under Sarva Shiksha Abhiyan scheme (SSAS). The Government also accorded administrative sanction for incurring expenditure of Rs.2.20 lakhs and the work was entrusted to the Executive Engineer on 09.9.2004. The District Collector accorded further administrative sanction on 18.10.2006 for incurring expenditure of Rs.3.50 lakhs and the work was completed on 01.12.2006. He also submits that the petitioner is not the owner of the property. He however does not deny the earlier land acquisition proceedings, orders of this Court and also the order of the Rent Controller though he would urge that those proceedings by themselves do not confer title on the petitioner.

The District Collector has annexed TSLR extract, which would show that though in column No.10 it is mentioned as sarkari and in column No.20 as GVM, in column Nos.22 and 23, it is mentioned that it is a tiled house belonging to Md.Ibrahim. There is no denial that Md.Ibrahim is grandfather of the petitioner. Secondly, Tahsildar (MRO), Khairatabad, addressed a letter to the Deputy Commissioner of Municipal Corporation of Hyderabad (MCH), Circle-V, requesting to furnish the name of the owner in respect of premises No.8-3-937 situated at Yellareddyguda. On the said letter, Deputy Commissioner of MCH endorsed that the property stands in the name of Md.Ibrahim. Apart from this, electricity connection for the premises stands in the name of Anthony De' Souza, who is admittedly tenant of the petitioner. Apart from these documents, the order of the Rent Controller in Rc.No.180 of

1980, dated 06.5.1981, the notification dated 24.2.1981 issued under Section 4(1) of LA Act, the notification dated 26.7.1989 issued under Section 4(1) of LA Act and the orders of this Court in writ proceedings challenging these notifications *prima facie* show that at least from 1950 onwards ownership to the property has been claimed by the petitioner or his predecessors.

The District Collector admittedly obtained necessary particulars from his subordinates and then filed additional counter affidavit on 16.3.2007. This created a doubt as to whether the office of the District Collector or the office of the MRO or the office of the Executive Engineer (Surveyor), who are officials involved in erecting a board near the petitioner's premises verified the record before obtaining necessary administrative sanction from the District Collector. As directed by this Court, learned Assistant Government Pleader produced the file No.65/1231/2003, from the office of the District Collector (social welfare wing) and the file bearing NO.1162/A2/CW/SSA/Hyderabad, from the office of the Project Director, Sarva Shiksha Abhiyan, Hyderabad. A perusal of the file received from the Collectorate would show that the MRO submitted a report on 04.5.2004 proposing to take 468 Sq.yards in T.S. No.4/1 Block-P, Ward No.6 of Yellareddyguda village, as it, "is classified as GVM as per the TSLR and that during the local enquiry, it is revealed that there was a small school functioning long back in the tiled house and it was collapsed, since the land remain vacant." District Collector in a routine manner passed orders, which set everything in motion leading to administrative sanction etc. The record nowhere even mentions that there is existing building on the land and that it was under possession of tenant, which is now admitted in the additional counter. The record also does not advert to the factum that the premises was initially let out to the District Educational Officer for running a school and that at the instance of the landlord, the tenant was evicted in the rent control case nor it refers to the earlier land acquisition proceedings. This only shows that all the decisions were taken by the District Collector ignoring past record and without personally verifying records or conducting personal inspection.

The counter affidavit of second respondent is deposed by Sri R.V.Chandravadan, present incumbent District Collector, Hyderabad. The counter affidavit and additional counter affidavit proceeds as if all the averments and allegations made therein are within the personal knowledge of the deponent. This is certainly not true. There were Court proceedings at least from 1980 till 1993. The present District Collector could not have been aware of all these proceedings. There is not even indication in the counter affidavit. Traversing the allegations regarding rent control case, the District Collector feigns ignorance although petitioner has annexed copy of the order passed by the II Additional Rent Controller in R.C.No.180 of 1980. All this would show that the respondents dealt with the valuable rights of the petitioner in a casual and negligent manner in gross dereliction of duty. In **General Court Martial** (supra), the Supreme Court while setting aside the sentence

awarded by the Court Martial and remitting the matter to Court Martial for passing appropriate sentence, noticed that the witnesses deposed before the Court Martial without verifying the correctness of the record and directed action to be taken against them. The relevant observations are as follows.

In the facts and circumstances of the case we find it necessary to invite attention of appellants 2 to 4 to consider initiating appropriate proceedings against P.Ws.6, 21, 26, 30 and 32 who deposed at the Court martial that they had signed or prepared official record on the oral directions of the respondent without verifying the correctness thereof, which act of theirs was in dereliction of duties. These state of affairs is highly distressing. We record our displeasure.

This Court is aware that in exercise of powers under Article 226 of Constitution of India, question of title either of the Government or of a citizen cannot be gone into (see **Parvatibai Subhanrao Nalawade v Anwarali Hasanali Makani**^[7], **State of Rajasthan v Bhawani Singh**^[8] and **Mohan Pandey v Usha Rani Rajgaria**^[9]). But background of the case, the way the counter affidavits are filed, leaves an unpleasant feeling in the mind of this Court that with a little more caution, respondents could have avoided gross contraventions of law which certainly resulted agony to the petitioner. Be that as it is, a cursory examination of various documents relied on by the petitioner would *prima facie* show that at least from the time of his grandfather, the petitioner is enjoying the property as owner. In such an event, unless and until the property is acquired, respondents could not have deprived the petitioner by erecting a board or by attempting to construct a compound wall. Therefore, there shall be a direction to the respondents to remove the board erected near the property and further direction not to interfere with the possession of the petitioner unless appropriate action is taken accordingly if the petitioner's property is required for a public purpose. This order shall not be construed as upholding the title of the petitioner or upholding the claim by the Government. These are the matters which have to be decided by the competent civil court.

The writ petition is accordingly allowed with costs.

(V.V.S.RAO, J)

May 01st, 2007.

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^[1] 1990 LED 1906 = 328 US p256 (1946)

^[2] AIR 1954 SCR 674

^[3] AIR 1961 SC 1570

^[4] 1995 Supp (1) SCC 596

- [\[5\]](#) AIR 1998 SC 983
- [\[6\]](#) (2006) 2 AC 307
- [\[7\]](#) (1992) 1 SCC 414
- [\[8\]](#) AIR 1992 SC 1018
- [\[9\]](#) AIR 1993 SC 1225